United States Senate

WASHINGTON, DC 20510

October 29, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
Washington, DC 20460

Dear Administrator McCarthy,

We are contacting you regarding the Environmental Protection Agency's (EPA) July 31, 2014 request for information (RFI) seeking comment on revisions to the agency's Risk Management Program (RMP). The RFI was identified as an action item in the May 2014 report to the President entitled, "Executive Order 13650 Actions to Improve Chemical Faciltiy Safety and Seucrity – A Shared Commitment" (EO Report). Both the RFI and the EO Report contemplate expansion of the RMP to include ammonium nitrate (AN). Specifically, we believe that it would be inappropriate and redundant to include AN in EPA's RMP program given that regulation of AN is already fully covered by Occupational Safety & Health Administration (OSHA) requirements set out at 29 CFR 1910.109(i). We believe that regulating AN through the RMP would impose a significant economic burden on the commercial explosives industry and the agricultural community and would provide little or no additional safety benefit to workers or the public. Instead, we believe any agency rulemaking to ensure the safety of AN should focus on the existing1910.109(i) standard. With some modification, this standard could be a model for clarity and effectiveness in ensuring the safe storage of AN.

As noted, we do not believe the RMP program is the best avenue for addressing safe AN storage, which is a straightforward exercise that is easily achieved through adherence to uncomplicated storage practices such as those included in 1910.109(i). The performance standards, such as those characterizing the RMP, are well-suited to chemical processes where sudden upsets, malfunctions, unplanned shutdowns, and changes in process conditions (e.g., pressure, temperature), could result in an accidental release. This is not the case with AN, which is stable and non-reactive unless subjected to extreme external stimuli such as fire or shock. The key to ensuring that AN is safely stored is preventing these occurrences.

Unlike flammable chemicals, which the RMP specifically addresses, AN does not, in itself, pose a fire hazard. While AN must be protected from fire because of its oxidizing properties, it does not burn and it does not initiate fire. There is no need to perform an elaborate RMP process hazard analysis (PHA) in order to ensure that AN is properly stored and that the storage facility has adequate fire prevention measures in place. All responsible industries practice effective fire prevention outside of the RMP. Moreover, fire prevention requirements for AN storage areas are expressly laid out in 1910.109(i). Additionally, OSHA is forming an Alliance with other government agencies and the fertilizer industry. Through the Alliance Program, OSHA works with groups committed to worker safety and health to prevent workplace fatalities, injuries, and illness. We expect fire prevention to be a major focus of this initiative.

The concern regarding exposure of AN to shock is primarily associated with its use in the manufacture of explosives. As you are aware, more than 75 percent of the AN used in the U.S. is consumed by the commercial explosives industry. Because of the widespread use of AN in manufacturing explosives,

the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has promulgated rules to prevent exposure of AN to explosives when stored at the same location. ATF regulations prescribe exact separation distances between AN stores and co-located explosives. The rules also ensure that facilities where both of these materials are stored are adequately distanced from offsite locations accessed by the public. This carefully enforced and time-tested regulatory scheme ensures that AN stores are insulated from accidental shock and that, in the unlikely event of an accident, any impacts will be confined to the storage site. Additional regulation under the RMP would add nothing to the current protections.

As you know, EPA encourages local responders to use the RMP to prepare emergency response plans. In the case of a fire at a facility handling AN, the appropriate plan and response is to evacuate according to industry guidelines. Outside emergency responders should never attempt to fight a fire involving AN. Industry guidelines have recommended a retreat distance of 1 mile, consistent with the current standard being considered, with some exceptions based on quantity and storage conditions, by the National Fire Protection Association for inclusion in its safety standard for AN. First responder organizations should be made aware of the existence of AN storage facilities in their jurisdictions though implementation of the Emergency Planning and Community Right-To-Know Act (EPCRA) and should be made aware of the appropriate evacuation response. The EO Report acknowledges the importance of improving local/state/federal communication regarding chemical hazards and responses. Ensuring that local responders understand the correct response to incidents involving AN would be a good place to start. EPCRA is ideally suited to accomplishing this goal. Resorting to the RMP would not only delay the dissemination of the needed information, it would unnecessarily complicate the process for all concerned.

Lastly, the RMP is a program specifically designed to measure "hazard," not "risk." We believe AN is more appropriately managed in accordance with principles of risk. The RMP program is intended to assess complex chemical processes with multiple opportunities for failure. The program's requirements for written plans detail, among other things, operating limits, emergency shutdown procedures, mechanical integrity, maintenance, and training are wholly appropriate for such operations. As noted above, the storage of AN, however, presents no similar opportunities for catastrophic failure due to processing changes or upsets, mechanical breakdowns, or runaway chemical reactions. The safe management of AN is simple -- it must be protected from fire and strong shock waves. Any potential fire or shock hazards existing in an AN storage area are easily identified without resorting to a complex program like the RMP.

The best thing for public safety is to apply existing regulations updated consistent with industry best practices to AN that have been effective and that will work to protect workers and the public. The commercial explosives industry, and the mining industry which is dependent on explosives manufactured from AN, as well as the agricultural community would be hugely impacted should agencies get this policy wrong. Again, we urge you not to not regulate AN under the EPA's RMP.

Sincerely,